

Minutes
WARRICK COUNTY AREA PLAN COMMISSION
Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN
Monday, August 13, 2012, 6:00 PM

PLEDGE OF ALLEGIANCE: A moment of silence was held followed by the pledge of allegiance

MEMBERS PRESENT: Guy Gentry, President: Mike Moesner, Brad Overton, Jeff Valiant, Marlin Weisheit and Larry Willis.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer and Molly McGregor, staff.

MEMBERS ABSENT: Amanda Mosiman

MINUTES: Upon a motion made by Larry Willis and seconded by Mike Moesner, the Minutes of the last regular meeting held July 9, 2012, were approved as circulated.

The President explained the Rules of Procedure and added that any rezoning would be forwarded to the County Commissioners on September 10, 2012, unless the rules were amended.

REZONING PETITION:

PC-R-12-12 – Petition of Maken Corporation, Danny Ubelhor, Pres. OWNERS: Maken Corporation, Danny Ubelhor, Pres. and Ubelhor Homes, Inc, Danny Ubelhor, Pres. To rezone 8.79 acres located on the N side of High Point Dr. approximately 680' (0.1 mile) W of the intersection formed by High Pointe Dr. & Park Place Dr. being The Amended Park Place III PRUD; Lots 12,13, & 14 of High Pointe Centre North 1E and lots 11 a & 11 b of High Pointe Centre North 1B, Ohio Twp. from "C-4" General Commercial to PUD consisting of "C-4" General Commercial. *Complete legal on file. Advertised in the Boonville Standard August 2, 2012.*

Danny Ubelhor and Jim Morley, Jr., Morley and Associates were present.

The President called for a staff report.

Mrs. Rector said she would start with the rezoning but then she will go over to the plat and give them staff reports on both because they had to file the plat or a development plan with the rezoning. She said they will have to be voted on separately. She explained they have all the return receipts from certified mail except for Bob's Gym. Mrs. Rector said they mailed the notice

for the rezoning and primary in the same envelope. She said this is a request to rezone 8.79 acres from C-4 to PUD/C-4 and there is no minimum lot size for commercial zoning. She said the Comprehensive Plan projects the area to be commercial and the existing land use is commercial lots in High Pointe Center. She said all surrounding property is zoned "C-4" and to the north is another section of Park Place and to the east and west are platted commercial lots. Mrs. Rector said to the south are some lots in High Pointe and two unplatted lots and to the southwest is Nance Commercial Subdivision. She added this rezoning is taking in the existing Park Place III PRUD and additional lots in High Pointe Centre North 1E and High Pointe Centre North 1B. She said they have a primary plat filed showing the layout of the PUD apartment complex and there are also three commercial lots. She said there is no flood plain on the property and there is an existing entrance off High Pointe Drive. She said they will have private streets in the development and residential apartments with accessory structures and commercial lots are allowed in a PUD zoning.

SUBDIVISION FOR PRIMARY PLAT APPROVAL:

PP-12-05 – Park Place Phase IV PUD by Maken Corporation, Danny Ubelhor, Pres. OWNERS: Maken Corporation, Danny Ubelhor, Pres. and Ubelhor Homes, Inc, Danny Ubelhor, Pres. 8.79 acres located on the N side of High Point Dr. approximately 680' (0.1 mile) W of the intersection formed by High Pointe Dr. & Park Place Dr. being The Amended Park Place III PRUD; Lots 12,13, & 14 of High Pointe Centre North 1E and lots 11 a & 11 b of High Pointe Centre North 1B, Ohio Twp. *Complete legal on file. Advertised in the Boonville Standard August 2, 2012.*

Mrs. Rector stated it is the same report for the return receipts for this plat. She said they are showing private streets and have provided cross sections plans to County Engineer for approval and he has signed off on the construction layout of the 24 foot wide pavement. She said they are also asking for no improvements to High Pointe Drive and that was approved they County Commissioners today. She said since this is a PUD and requirements are relaxed and so the streets do not have a 50' right of way for a private drive but they do have the required 24' pavement width which is required. She said the County Engineer has reviewed the design plans and has approved them. She said they are requesting no additional drainage from the previously approved plans; however they did relocate existing drainage easement and drainage structure and a dollar amount will be posted for that construction. She said those plans were approved by the Drainage Board. She said Newbugh Sewer has submitted a letter stating they have lines in place and available for connection and Chandler has water lines are in place and available for connection. She explained this PUD is taking in the existing Park Place and will be an extension of the development. She said there will also be three commercial lots and this plat is also relocating an existing 16' PU & DE. She said they have submitted requests to all of the utilities in the area asking for statements. She said their letter states the only thing located within the easement is a storm sewer pipe and it will be partially removed and the drainage will be rerouted

around the building. She said so far they have received letters from Indiana American Water and Chandler Utilities. She said they are waiting for the Vectren and Newburgh Sewer letters but they are coming. Mrs. Rector said per the ordinance and if this was not a PUD, each unit is required to have two parking spaces. She said the new section of apartments is short 9 parking spaces. She said in their packet they have a letter and graph from Danny Ubelhor showing all of the existing apartments they have and the number of units they have and the units that only have one person living in them. She said this is a 55 and older community and many of the residents only have one vehicle and some don't have any. She said the other section of the complex has ample parking. She said she asked them to put something together so they could see that it wasn't necessary to have all those parking spaces and a PUD relaxes all of the requirements. She said the plat is in technical conformity with the Subdivision Control Ordinance but they need those letters from the utilities and the rezoning must be approved by the County Commissioners prior to recording of secondary plat

Jim Morley said one of the papers they received is an analysis of the parking lots at Park Place Subdivision Phases 1-3. He said Park Place 4 is only one bedroom apartments and they will see that building 17 and 18 are existing one bedroom buildings and one of the buildings have one car per unit and the other one has .67 cars per unit. He said they are providing a little over 1.5 spaces per unit in this new section and they feel like they are probably double what they need but it worked out with the site for it to be that way. He said they feel two spaces per unit would be severe overkill and there is not a reason to pave over that much grass and they ask for the parking to be relaxed down to what is shown on the plat. He said the majority of the buildings shown on the plat is Park Place 3 and already constructed. He said this plat is really only adding two new buildings on the southwest corner. He said the reason they had to include the other section is because they are tying in to the internal streets of Park Place 3 and to tie into that existing private street they had to include those buildings into this plat. He said they have received all the other required approvals today.

Guy Gentry questioned the numbers on the building because there is a duplicate number in what is existing and what is proposed.

Mrs. Rector said they would check the numbers.

Larry Willis asked if they are going to leave green area in case they ever need additional parking. He said they mentioned green space earlier.

Jim Morley said just there is no reason to pave it. He said they are just trying to keep construction cost down and keep the rents affordable for the seniors and that is one way they can do that and they are trying to match the parking to the demand.

Mike Moesner asked if the parking is a first come first serve basis or are they assigned to a unit.

Jim Morley said they are a first come first serve basis but there is basically 1.5 in front of every unit and there are sidewalks in front of every unit.

Ascertaining there were no other questions from the Board and being no remonstrators present, the President called for a motion.

Larry Willis made a motion based on the evidence present and petition on file to recommend approval to the County Commissioners of PC-R-12-12 from “C-4” to PUD consisting of “C-4” General Commercial. The motion was seconded by Mike Moesner and unanimously carried. The President called for a motion on the plat.

Guy Gentry made a motion to approve PP-12-05 with the condition the rezoning is approved and the utility letters be submitted. The motion was seconded by Larry Willis and unanimously carried.

APPEAL OF APPROVAL: MS -12-06 – Gourley Lake Minor #2

This item was continued to the end of the meeting due to not all parties being present.

OTHER BUSINESS:

Warrick County Commissioners Resolution 2012-04 – A resolution regarding the present condition of 4811 Overland Drive, Newburgh, Indiana. *Con’t from April 9, 2012. Con’t for sixty days June 11, 2012. ILP to rebuild issued August 1, 2012.*

Mrs. Rector said this is about the house on Overland Drive that burned down a few months ago. She said our office issued the Improvement Location Permit to construct a new residence to Mr. McCutcheon on August 1st; however, the Building Department issued an exterior/interior remodel permit. She said the building inspector stated that they could use the existing foundation and he would have to meet with them to see if any of the plumbing, electrical, etc. could be salvaged. She said Mr. McCutcheon told the staff that he had a builder who was not licensed here who wanted him to get the permits before he would purchase the lot. She said our permit is subject to starting construction within six (6) months and completion within (2) years; so they would have until February 1st to start construction. She said the building permit has the same time frames.

She said she talked to their attorney James Kornblum on August 9, 2012 and he said they will either rebuild or tear down and they have at this time until the end of August/first of September by their insurance company to either get it demolished or start construction on the new home. She said he said the insurance company is currently paying their rent for an apartment in Fishers, IN and added that if they decide to rebuild the insurance company would give them more time and maybe on the demolition if they sell it to someone else. She said he also said that Mr. McCutcheon had boarded up all the openings in the home and removed the drywall inside. She added Attorney Kornblum said that they are negotiating with a perspective buyer and also said

that they have too much equity in the home and with the value of the lot that they would not just walk away from the situation.

Mrs. Rector said the attorney also told her the reason they were living in Fishers is because Mrs. McCutcheon works for ATT and the main office is in Indianapolis and she would prefer living there if they can find a buyer for this lot. She said she had no choice but to give them a permit and everyone wanted the house demolished and a new one constructed or something. She said she doesn't know now if they need to wait six months to see if they begin construction. She said there is a report from the building inspector that says all of the openings have been boarded up. She added she was told that Mr. McCutcheon is a contractor.

The President asked if there was anyone in the audience wishing to speak regarding this issue to which there was not.

Mike Moesner said if they got their permits and they have so much time to get started then he doesn't know what else they can do.

Attorney Doll said the question is whether it is a public nuisance.

Guy Gentry said they have it boarded up.

Mike Moesner said it looks to him like it is as clean as they can do with what they have.

Attorney Doll said then they will just have to wait to see what they do in the first six months.

Guy Gentry said so is this going to be on the agenda for the next six months or can they get it off until six months from now because he doesn't want to see it again until then.

Attorney Doll said there should probably be a motion that the property be inspected right before the six month anniversary so they will know what is going on.

Mrs. Rector said if something happens in the meantime she will report it to the Board and then it can just be dropped from the Agenda.

Marlin Weisheit said hopefully it will take care of itself within the next few months with the insurance company.

Mrs. Rector said she is sure the people want their money; they're not going to want to walk away. She said the lot itself is worth \$25,000.

Guy Gentry called for a motion.

Marlin Weisheit made a motion to continue this for six months and to have the inspector go to the property in the end of January and to place this on the February Agenda unless it has been resolved before that time. The motion was seconded by Larry Willis and unanimously carried.

Formal Complaint ~ Frank Schnell dba FIT Tire Recycling, OWNER OF RECORD: J.H. Service Co., Inc., by Ronald Witt, Sr., Pres. ~ Tire storage ~ Report from IDEM meeting.

Frank Schnell, Mrs. Schnell and Isaiah Schnell were present.

The President called for a staff report.

Mrs. Rector said this matter was continued from last month in order to get a report from IDEM regarding the July 24th conference. She said she received an email from Jennifer Reno saying the Agreed Order contains a nine month clean up time deadline and the Schnell's verbally agreed to that deadline during their settlement conference on July 24, 2012. She added the Agreed Order shall be effective (Effective Date) when it is approved by the Complainant (IDEM) and received by respondent (FIT) and shall have no force or effect until the Effective Date. She said copies of the order are in your packets and she sent copies to Morrie and he can explain what they mean.

Morrie Doll asked if the agreed entries have been accepted or signed by IDEM.

Isaiah Schnell said they have not because they just received them in the mail, but they will sign it and put it in the mail tomorrow.

Attorney Doll stated so it is their intent to sign the agreed entry. He said for the Board's edification, the agreed entry recites the fact that there are five violations at this site under IDEM rules and regulations. He said the first is that they have more than 1,000 tires at the site, and that is not permissible unless they are in compliance with the process and the permit requirements concerning storage of used tires. He said the second violation is they are operating a waste tire storage or processing without a valid certificate of registration. He said the third is presently, because of the amount of tires at this site, the waste tire storage site and the waste tire processing site, poses a threat to human health and the environment and creates a nuisance. Attorney Doll said IDEM indicated that this also creates a fire hazard. He added fourthly they have to prevent water from accumulating in the tires (and they are not doing that) within 7 days of receiving the tires as required, and finally they have to maintain financial assurance to the State of Indiana in the amount of not less than \$10,000 sufficient to the fact to resolve any problems with this. He stated that the order indicates that within 30 days after they receive it, that it's been accepted by IDEM, they are to submit a complete waste tire storage registration and a financial insurance documentation showing their ability to, within 270 days, remove from the site all waste tires in excess of 1000 tires. He then questioned how they were going to do that.

Isaiah Schnell said they would cut up the tires and put them onto the walking floor and taking them out of there.

Attorney Doll stated that they are also required, in sub paragraph 4, to produce receipts showing that they have been disposed of in a permitted solid waste disposal.

Isaiah Schnell stated that it was not a problem because Veolia gives them a ticket when they take the tires up there.

Attorney Doll stated his question is that it is about \$800 per trailer to dump and how were they going to do that.

Isaiah Schnell stated that he has talked to Veolia personally and that they have something worked out.

Attorney Doll stated that the inspection states that they, at some point, had over 19,000 tires on the property.

Isaiah Schnell said that how they calculate that number is with a calculation and that there are not 19,000 tires on the property. He stated that it is a calculation of the number of semi tires multiplied by a number.

Attorney Doll said that IDEM's calculation is 19,221 tires but at 19,000 tires, that's about 28 loads.

Isaiah Schnell said it is about 12 loads.

Frank Schnell said that each semi they count as five tires. He said each tractor tire, no matter if it's a small or big tire, they count as 25 tires. He said when they cut a tire up it makes 3 pieces, and they count those as 3 tires, which is excessive to say there are 19,000 tires up there.

Attorney Doll said his question is they can't grow the stock pile of tires to which Mr. Schnell said they are not.

Mrs. Rector said she is repeating what Mrs. Reno told her in that they owe the landfill quite a bit of money and they will no longer take any of their tires.

Isaiah Schnell said that was before he talked to them and he has been trying to call Ms. Reno for the last couple of days.

Frank Schnell said they have a good working relationship with the landfill and the manager said they would work with them.

Mrs. Rector said that is fine but she just wanted to report that Mrs. Reno said none of the tires could leave.

Isaiah Schnell said that Blackfoot realizes their income is low and they are asking that they keep an open communication line with them and to send them as much money as possible. He said he graduated with the daughter of the head of the landfill. He said they did have a big bill there but they have deposited some money into their account.

Attorney Doll said he still doesn't understand what the new source of revenue will be. He said their revenue source was taking whole tires but they are precluded now from taking whole tires and so isn't that eliminating their revenue stream.

Frank Schnell said they are not precluded from taking new tires; they are allowing them to take tires in. He said they increased the tipping fees which means...

Attorney Doll asked if he agrees that within 270 days they have to be down to 1000 tires or less.

Isaiah Schnell said 270 days is nine months and he is not going to be working on these tires in the ice cold. He said he isn't going to say he will be done in a month but he has dates in his head and in 270 days...

Attorney Doll asked what was the permitted amount of tires in the Special Use.

Mrs. Rector said they can't have any outside and they could have 1000 inside.

Frank Schnell said initially they got permitted for 2000 tires inside and a 1000 outside. He said since then the State has changed things and now they say all they can have is a 1000.

Mrs. Rector said what the State approved and what the BZA approved are two different things.

Attorney Doll said it seems to him the County's options are to either give them an opportunity to comply with IDEM's agreed order and he doesn't understand how they are going to pay the tipping fees. He said he is worried if they continue to bring new tires in ...they are not in compliance with the permit now which means the Board can instruct him to go to court and get a cease and desist order. He said there is a potential fine of up to \$300 per day the Judge could levy per each day of violation. He said it is up to the discretion of the Board if they think it is worth the nine months to see if they can resolve it. He said he is worried they will end up nine months from now with 19,000 tires or parts of tires somebody is going to have to pay to clean up. He said it is a fire hazard and Muncie had an out of control tire fire that burned forever.

Mrs. Rector said she knows they have worked very hard but they are in violation and she can't see allowing them to keep bringing in more tires and not getting rid of more than what they bring in. She said she can see letting them bring in ten if they are getting rid of twenty because they have to make money to do something but sooner or later it could be ... they are allowing a violation to continue is what she is trying to say. She said the woman with IDEM said they do their best to give them time and work with them. She said IDEM doesn't want to have to go in there and clean up but they may have to. She said her problem is if they keep bringing them in and none goes out.

Isaiah Schnell said they are going out.

Mrs. Rector said they were only allowed a 1000 and they ended up with over 20,000.

Frank Schnell said it was grossly over counted by the State.

Isaiah Schnell said the fact of the matter is they have more tires than allowed.

Marlin Weisheit said he drove by last weekend and he could see an improvement from last month. He said it is going to have to move a little faster but he thinks they are going to make it. He said he thinks they are sincere about making this work but they do need limits on how much to bring in.

Isaiah Schnell said he understands they don't want to bring in 50 tires and take 10 tires out.

Larry Willis questioned the statement that when they cut up one tire into three pieces then each piece was counted as one tire. He said if that is true then if they had 6000 tires they would count them as 18,000 tires.

Isaiah Schnell said that is it and they have more semi tires now than passenger tires and one semi tire is (counted) five so if you have five tires that is 25 and that is how they got to the 20,000 tires.

Mrs. Rector said the letter has semi and passenger tires broken down.

Jeff Valiant asked where they are with getting the new machine.

Isaiah Schnell said the deadline has passed and the last he heard it would be in about a week and that is from the attorney.

Mike Moesner said when that happens then things will move a lot quicker.

Frank Schnell said they will have to get the bugs worked out.

Mike Moesner said it looks like they are getting to the point that they may actually get the machine.

Frank Schnell said it is supposed to be sitting on their dock this coming Friday.

Mrs. Rector asked who is telling him this because Mrs. Reno told her IDEM had nothing to do with it because they were given grant money and ...

Isaiah Schnell said Stan (IDEM attorney)...

Frank Schnell said he can give them the phone number to talk to him and they are putting pressure to get that machine to them.

Attorney Doll said if this catches fire...

Frank Schnell said he intentionally put the tires in piles so you can get in between them with fire trucks. He said he doesn't have them all in one great big area and you can take a pay loader and push them out and make firewalls. He said he was on a fire department at one time.

Guy Gentry called for a motion.

Mike Moesner said he would move to give them more time to see if they get the machine. He said he can tell they are making progress and would move they report back at the next meeting to see how things are going. Jeff Valiant seconded the motion.

Larry Willis commented that if they are sending out tires and it costs \$800 a load but they are not bringing very much money because the tipping fees aren't there...

Isaiah Schnell said one thing is they added tipping fees and the second thing is they are trying to produce another product to get money coming through the back door. He said they are also doing other avenues to get revenue.

Frank Schnell said a lot of the tires sitting there are rims and they probably have \$7,000 - \$8,000 worth of rims laying there which will be cash flow too.

Isaiah Schnell said most of the passenger tires on the property are rims and that is why they have not been worked up yet. He said they have two de-rimmers and neither of them works.

Mrs. Rector said sometimes it is hard to see progress within a month and she doesn't know if a picture will show any progress. She said the motion was to see what progress was made and she doesn't know what she may be able to report.

Guy Gentry said they would know if the machine is there.

Mike Moesner said he could report if he has the machine up and running and if not what exactly they have moving out.

Marlin Weisheit said they don't want to overlook the fact that they are running a business that provides a service they all need.

Isaiah Schnell said they will be able to tell the progress because if 500 semi tires disappear they will know it.

Mrs. Rector said she needs to be clear because she needs to know what to look for.

Isaiah Schnell said if he has the receipts showing the tires went to Veolia they will also know.

Jeff Valiant asked if there is any way they can supply the Board with a number of tires that have been taken in versus what is taken out.

Isaiah Schnell said he understands where they are coming from but he wants them to know since he has come home he has made a difference.

The President said there is a motion and second on the floor and called for a vote. The motion carried unanimously.

Formal Complaint ~ Michael & Carlotta DeClue ~ 270 W. Walnut St., Elberfeld, IN ~ *Granted 60 days to resolve violations May 14, 2012. Granted additional thirty days July 9, 2012.*

Mike DeClue was present.

The President called for a staff report.

Mrs. Rector said Mr. DeClue appeared before Board July 9th and Board ruled that the fuel tank, semi and trailer were to be removed from property by this meeting and there be no other truck traffic other than them refueling in order to empty the tank. She said the Zoning Inspector went to the property August 3, 2012 and reports the semi, trailer and gas tank are no longer at this address.

Guy Gentry asked about the purchase of the other property to which Mr. DeClue said the owner has changed his mind.

Marlin Weisheit made a motion to find him no longer in violation. The motion was seconded by Larry Willis and unanimously carried.

Formal Complaint ~ Kenneth & Ruby Grigsby ~ 8866 Oak Grove Rd., Newburgh, IN ~ *Junk/Salvage Yard without 8' fence. Granted 60 days to resolve violations May 14, 2012. Continued from July 9, 2012.*

Mrs. Rector said this was continued from July 9, 2012. She said the Zoning Inspector went to the property on August 3, 2012 and reports the property has been cleaned up. She said she sent an email to Attorney Shively telling him it was the consensus of this Board and Attorney Doll that based on the photos submitted they were no longer in violation and they would not need to appear this evening and that she would follow up with an official letter after this meeting.

Larry Willis made a motion the property is no longer in violation. The motion was seconded by Marlin Weisheit and unanimously carried.

Formal Complaint ~ Donald G. Adams, Jr. ~ 7322 Jenner Rd ~ *Determination on violation of operating a car recovery business in an "A" Agriculture zoning district. July 9, 2012, Board ruled to give until this meeting to file rezoning.*

Mrs. Rector said Mr. Adams has filed his rezoning application and it will be before the Board next month. She said he has met with site review and he is still in violation but working on coming into compliance.

Formal Complaint ~ Kathy Effinger ~ 5533 Martin Road ~ Determination on violation of alleged boarding house in an “R-1D” Single Family Dwelling zoning district. *July 9, 2012, Board ruled to cease and desist by August 1, 2012. Letter to be submitted by Ms. Effinger.*

Mrs. Rector said Mrs. Effinger sent an email saying the gentleman who was renting the room moved out on July 31st.

Larry Willis made a motion the property was no longer in violation. The motion was seconded by Jeff Valiant and unanimously carried.

The President stated at this time they would hear the appeal of the minor subdivision.

APPEAL OF APPROVAL: MS -12-06 – Gourley Lake Minor #2

Pam Trickey was present.

Mrs. Rector said Pam Trickey owned part of the property that was the original Gourley Lake Minor Subdivision and she still owns a large parcel and is proposing to divide it into three parcels. She said one parcel has the existing home that belonged to her parents and then two new building sites. She said it meets the Subdivision Control Ordinance; however, her sister Sherra Wilson filed a letter of objection against the minor subdivision saying *This is to inform you of my concerns regarding parcel one in Gourley Lake Minor Sub on the proposed plot plan that states that parcel 2 has lake access. I am requesting this in a formal written letter stating that fact.* Mrs. Rector said the letter continues about problems between the two sisters and the Sheriff’s Department regarding the lake. She said it also says there is a concern over the shared driveways. Mrs. Rector said the procedure for a minor subdivision is for a letter of objection they have the owner and the complainant come to Site Review and try to solve the problem. She said Attorney Doll attended this meeting because of the lake access and because this had all gone through court procedures with the first minor subdivision. She said Ms. Wilson was supposed to let her know within 24 hours if she still wanted to continue her objection and she did call and say she wanted to continue it; that her attorney hadn’t had time to look at it but he told her to go ahead and still object to it and bring it tonight but she isn’t here. Mrs. Rector said the concern Attorney Doll had on the minor subdivision was that there is a notation, period, that any lots have lake access because that is not the Plan Commission’s job to determine whether they do or they don’t and that they would need to take this back to Judge Kelley who made the initial ruling and get another ruling from him. She said Attorney Doll’s suggestion was to just take the statement off, period and Mrs. Trickey has agreed to do. She said her surveyor is here tonight and he told her

today they will either give them a new mylar with it taken off or he will mark it out or erase it but it will be taken off before it is recorded. She said since Mrs. Wilson is not present and the plat is conformity with the Subdivision Control Ordinance and they have agreed to take off the statement that Attorney Doll had the concern about, she needs the Board to tell her whether to record the plat or not.

Guy Gentry said he was at the Site Review meeting and that is what they said, the lake access is something that is typically in the covenants and restrictions which they don't enforce and so being it is in technical conformity and the objectioner is not here – it may still end up in – he doesn't know how things will settle – it may end up in civil battles but he thinks that is where it belongs rather than before this Board to get resolved. He said he has no objection himself as to the way it is laid out and it meets all of the requirements and so he sees no reason not to approve it.

Marlin Weisheit asked which parcel they were discussing to which Mrs. Rector explained the layout.

Guy Gentry said the battle has been between (the owners) of lot 2 and lot 1 and they are dividing lot one up and the concern might still be there but it isn't anything this Board has anything to deal with. He said this is typically something that had it not been objected to, the Executive Director would have approved it as a minor subdivision but because there was an objection and they didn't get it resolved in Site Review it had to come to the Board. He said if they had resolved it at Site Review it would not have had to come before this Board. He said the person who is objecting is not present and so he called for a motion.

Mrs. Rector said the record will show that Mrs. Trickey and her husband are present. She then asked Mrs. Trickey if she still agrees to take the verbiage off the plat to which Mrs. Trickey acknowledged that is correct.

Guy Gentry made a motion to instruct the Executive Director to approve the minor subdivision with the removal of "lake access" from the plat. The motion was seconded by Marlin Weisheit and unanimously carried.

Discussion: Signage in building setback line

Mrs. Rector said this discussion is for on premise signs – not billboards that someone makes money renting. She said they are having a lot of Variances needing to be filed because several of the commercial properties have large set back lines. She asked Danny Ubelhor to be here tonight because most of the subdivisions are the ones his father developed and placed the big setbacks on the lots. She said in her discussion with Danny he told her his dad liked the parking lots to be in

front and the lighting and all of that down at the road in front of the building but never did they ever intend for people to not put their signage out there. She said otherwise the signs have to go back 50' to 100' from the road. She said two Variances have been filed for the next BZA meeting because of the setback line and they had some last month. She said when Les Shively was the Plan Commission Attorney his opinion was that a sign did not have to meet that standard, only that it met the 5' commercial setback requirements. She said any commercial property can have a five foot setback line and they can obtain a permit and that is why you see those signs within the building line. Mrs. Rector said Attorney Doll's opinion is a sign is a structure per the definition. She said it is also against Indiana Code in approving Variances and it is hard to meet the terms to give approval for them to put their signs there, even though they might have thirty signs down the street that have permits and now someone wants a new sign and they can't. She said she and Attorney Doll and Guy have talked about this at Site Review and her opinion is that no developer ever intends for a sign to be 50' to 100' feet off the road and if they did they would put it in their restrictions. She said after they talked about it Attorney Doll said the Board could make a ruling or they could ask to amend the ordinance to exempt signs from the definition of a structure – on premise signs in the building setback line. She said she wants to make it plain that they can't just go anywhere or that billboards could go in a setback line. She said small businesses have to come in file a Variance for their sign and Morrie is telling the BZA they don't really have just cause to have the Variance approved because it is something self-created. She said it has turned into a problem and they need to fix it.

Attorney Doll agreed they need to fix the problem instead of granting Variances. He said they can fix it anyway they want.

Mrs. Rector said they can make a ruling that an on premise sign can go in a building setback line as long as it meets the zoning setbacks or they can have her amend the ordinance and have a public hearing here and before the Commissioners.

Marlin Weisheit asked if we should limit the size of the sign to which Attorney Doll said they already do that.

Mrs. Rector said there is height and size limits already set for signs.

Larry Willis said the problem is they are hearing Variances for these signs and they don't really have a way to really give it to them according to the rules and the existing court cases. He said people have a hard time finding some small businesses in traffic especially if the sign has to be back fifty feet from the road. He said when you are trying to fight traffic it is hard to see – no matter what road you are on. He said they had a church last month that wanted a Variance for a sign on Robin Hill Road and they granted it because it was a religious institution that falls under a different law and they couldn't say no even if they wanted to.

Mrs. Rector said it is called a building setback line and a sign is not a building so they would need to change the name to structure setback line.

Larry Willis said he agrees with the Executive Director that the signs should be exempt from the setback line.

Guy Gentry said a ruling would be immediate tonight to change the ordinance would take a little more time but he thinks that is cleaner. He then suggested they make a ruling to cover it until the ordinance is approved.

Mrs. Rector asked if they make a ruling tonight will that take care of the two sign Variances that have been filed and can she notify them they no longer need the Variance and reimburse them their money.

Attorney Doll said they would no longer need the Variance but he can't answer the refunding of the money.

Mrs. Rector said she would call the State Board of Accounts.

Larry Willis asked if there is way to refund their money to which Mrs. Rector said there is.

Larry Willis asked Danny Ubelhor if he had any comments before he makes a motion.

Danny Ubelhor said he thinks the intent wasn't for the signs it was for the building because the lots are 1200 feet deep and so there was room to shove the buildings back off the road and they weren't intending to keep the lights or the mailboxes or signs back 50 to 100 feet along with the building.

Larry Willis made a motion that on premise signs are not a structure subject to the setback effect now and that the Executive Director seek to refund any pending applications for Variances associated with the same and to give them their permits and present an ordinance to the Commissioners in order to codify this into the County Ordinance. The motion was seconded by Mike Moesner and unanimously carried.

* *

Jim Morley, Jr. said Mr. Ubelhor and he were discussing the approval of their rezoning petition earlier this evening. He said they want to obtain a building permit as soon as possible and wanted to see if was possible for the rezoning to be forward to the County Commissioners in two weeks versus four weeks.

Guy Gentry said he thought they wanted to do that and alluded to that at the beginning of the meeting.

Mr. Morley apologized and asked if they would forward it to the August 27, 2012 Commissioners Meeting.

Larry Willis made a motion to amend the rules and allow the rezoning to appear before the Commissioners on August 27, 2012. The motion was seconded by Marlin Weisheit and unanimously carried.

Discussion: Formal Complaint Forms

Mrs. Rector said Mr. Overton wanted this on the agenda for discussion and to look it over. She said last month there was discussion about whether people should have to appear at the meetings and what happens if they don't and also about appearing in court. She said that when they are made to appear at the meeting you do find out a lot more than when they are not here. She said the person in violation is just going to say what the Board wants to hear and things can be misleading. She said she doesn't know how they want to handle it.

Mike Moesner asked if the complainant reads the form to which Mrs. Rector said they do and they are also told they have to come to the meetings and come to court.

Mrs. Rector said it is easy to put something on paper instead of confronting someone in person.

Guy Gentry said he thought the question was if they are not here do they automatically ... but he falls back to it says "may be grounds"...he still thinks they have to look at it on a case by case basis and just because they weren't here they can't just automatically say they are going to drop it because there may be other evidence...

Attorney Doll said they may become aware of a public health hazard or ...

Guy Gentry said he doesn't think that just because they are not here is an automatic...

Mrs. Rector said how about if they don't show up on the first meeting it is continued for thirty days and have her write them a letter and say they agreed by signing the complaint form that they would appear before the Board. She said that still won't make them come.

Attorney Doll said he still thinks that should be case by case.

Guy Gentry agreed and said there may be enough evidence and it is obvious.

Attorney Doll said a party may file a complaint and not show up for the hearing but the person in violation may show up and say you are right I am going to clean it up and fix the problem. He said he doesn't think they want to dismiss it because they are fixing the problem. He said he thinks they want to leave it that it "may be" dismissed in the discretion of the Board.

Guy Gentry said he doesn't see any way this Board can hold somebody to ...they emphasize they need to be here but he doesn't think they have the authority to fine them or throw them in jail if they don't appear.

Brad Overton said his thing was the wording somewhat contradicted itself.

Attorney Doll asked how so.

Brad Overton read the form *by filing this complaint I agree to cooperate and assist in all investigations and...including but not limited to attending and testifying at all public meetings.* He said but then ...he means the fact that it tells them they have to do it but then if you have to do something how are you going to make them do it.

Attorney Doll said the remedy is the next line. *I understand that the failure to assist or cooperate may be grounds for the administrative dismissal of this complaint.* He said he thinks that is the only remedy and it is discretionary. He said they may dismiss the complaint if they don't help them.

Guy Gentry said if it is one of those gray areas where they don't really see it is but the complainant thinks it is but then they don't show up then...like tonight with that plat. He said if she had shown up she may have given evidence to them for them to continue it.

Brad Overton said it makes more sense to him now seeing it in writing and he understands it a little better now.

Morrie Doll said they have had vindictive filings and it has been a mess with a husband filing on a wife.

Mrs. Rector said someone forged someone else's name and that is why they have to be notarized. She said the complaints are a big pain.

It was the consensus of the Board to leave the complaint form as printed.

ATTORNEY BUSINESS:

Attorney Doll said they had a hearing set for Friday on the Rainey property but he had to continue it due to a family medical emergency and he will be out of State. He said it has been reset for Friday, October 12th. He said it is his understanding they didn't have good service because they declined to accept. He said Mr. Rainey is not accepting his certified mail and so he will go back in September to see if they got the mail for the October meeting and if not he will personally serve him.

He said next Wednesday at 1:00 p.m. they have the Yankeetown Road complaint in court.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector said she didn't know if they wanted to make this part of the record or not but she was contacted by the Solid Waste Superintendent wanting to know about FIT Tire because they are ready to have the County Tire Day and FIT Tire is one of the companies they were considering. She said she told them of the violation.

Guy Gentry said he thinks this Board should instruct her to send a letter to them strongly urging they not add additional tires to this site since they are in the process of trying to get it cleaned up.

Mrs. Rector asked if she should speak to the Commissioners because the Plan Commission has nothing to do with Solid Waste.

Guy Gentry said he understands that but he did call for her opinion and he thinks they should give it.

Mrs. Rector said he came into the office today.

Attorney Doll said he would write Solid Waste a letter telling them that FIT Tire was not in compliance with their County permit nor to your knowledge are they in compliance with their State IDEM permit and they would ask that Warrick County not send additional tires there.

Marlin Weisheit said hopefully for the next time they have it FIT will have their shredder going and they can work with them.

Being no other business the meeting adjourned at 7:20 p.m.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director